

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

ISAAH RIDER, a Minor, by and through his Natural Mother and Next Friend, MICHELLE RIDER,

Appellant-Respondent,

v.

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER KANSAS CITY,

Respondent-Appellant.

DOCKET NUMBER WD76680

(Consolidated with WD76711)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 13, 2015

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Charles H. McKenzie, Judge

JUDGES

Division II: Ellis, P.J., and Howard and Pfeiffer, JJ.

CONCURRING.

ATTORNEYS

R. Douglas Gentile, Randall L. Rhodes, Jeffrey D. Rowe, and Brennan B. Delaney, Leawood, KS

Attorneys for Appellant-Respondent,

Casey O. Housley and Krystle M. Dunn, Kansas City, MO, and Thomas B. Weaver, St. Louis, MO

Attorneys for Respondent-Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ISAIAH RIDER, a Minor, by and through)
his Natural Mother and Next Friend,)
MICHELLE RIDER,)

Appellant-Respondent,)

v.)

THE YOUNG MEN'S CHRISTIAN)
ASSOCIATION OF GREATER KANSAS)
CITY,)

Respondent-Appellant.)

OPINION FILED:
January 13, 2015

WD76680 (Consolidated with WD76711)

Jackson County

Before Division II Judges:

Joseph M. Ellis, Presiding Judge, and Victor C. Howard
and Mark D. Pfeiffer, Judges

Isaiah Rider ("Rider"), by and through his mother, Michelle Rider, appeals the judgment of the Circuit Court of Jackson County, Missouri, following a jury trial, which awarded him damages against The Young Men's Christian Association of Greater Kansas City ("YMCA") in the amount of \$590,652.50. On appeal, Rider claims that the judgment was in error because the trial court submitted to the jury an instruction allowing it to assess a percentage of comparative fault to Rider for failure to keep a careful lookout while there was no substantial evidence to support that instruction. The YMCA cross-appeals, claiming that the trial court erred in: (1) refusing to apply Kansas law with respect to comparative fault and limits on non-economic damages; (2) denying its motion for directed verdict on Rider's negligence claim because there was no evidence that there was any water on the floor to cause Rider's slip and fall; (3) allowing Rider to submit his case under a general negligence theory, because only a premises liability theory would be proper; and (4) refusing to declare a mistrial based upon Rider's counsel's improper references to liability insurance.

AFFIRMED IN PART; REVERSED IN PART AND MODIFIED.

Division II holds:

The trial court improperly submitted the instruction on Rider's comparative fault for failure to keep a careful lookout because, since no witness to his accident saw any plainly visible dangerous condition that Rider could have seen and taken effective precautionary action to avoid, there was no substantial evidence to support submission of the instruction. Also, because it appears that no evidence that would support the instruction is available, the proper remedy is modification of the judgment to award Rider the entire amount of the damages found by the jury without reduction; remand is not warranted.

Because there was no evidence of Rider's comparative fault, the YMCA's claim that the trial court erred in refusing to apply Kansas's comparative fault law is moot. The trial court did not err in applying Missouri law as to Rider's right of recovery because, although the incident giving rise to the injury occurred in Kansas, Rider is a Missouri resident and the YMCA is a Missouri not-for-profit corporation with its principal place of business in Missouri. Missouri has a greater interest, therefore, in applying its own law with respect to right of recovery than does Kansas.

The trial court did not err in refusing to direct a verdict against Rider on his negligence claim because there was sufficient substantial evidence that there was water on the floor causing Rider's slip and fall.

The trial court did not err in allowing Rider to elect to submit his claim under a theory of general negligence instead of a theory of premises liability. There was evidence presented that the dangerous condition of the wet floor was not a passive condition inherent to the property but was, instead, caused by the affirmative conduct of the YMCA, who then did nothing to correct the dangerous condition.

The trial court did not abuse its discretion in refusing to declare a mistrial due to Rider's counsel's references to insurance. The trial court clearly found that the references were not intentional or intended to prejudice the jury. Also, the YMCA's own witnesses voluntarily made references to insurance, and the trial court instructed the jury to disregard any potential insurance in calculating its award.

Opinion by: Mark D. Pfeiffer, Judge

January 13, 2015

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